



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

October 24, 1994

Ms. Lan P. Nguyen
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR94-663

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28575.

The City of Houston (the "city") received a request for information concerning a certain driver for the Greater Houston Transportation company d/b/a Yellow Cab. You contend that information relating to medical reports submitted to the city concerning the driver are excepted from required public disclosure under section 552.101 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 5.08 of the Medical Practice Act, V.T.C.S. article 4495b, provides that:

(a) Communications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient, is confidential and privileged and may not be disclosed except as provided in this section.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

You submitted two documents for our review. Portions of the documents are clearly created by a physician and therefore confidential under section 5.08(b) of the Medical Practice Act. Accordingly, you must withhold all of the information contained in the documents that follows the header **"TO BE COMPLETED BY PHYSICIAN."** The portions of the documents that precede this header, however, are created by the driver not a physician. Nor is it apparent that this portion of the document constitutes a communication between one licensed to practice medicine, relative to or in connection with any professional services as a physician and a patient. You may not, therefore, withhold the portions of the document filled out by the driver that precedes the header **"TO BE COMPLETED BY PHYSICIAN"** under section 5.08(b) as incorporated by section 552.101 of the Government Code.

However, we are currently considering whether the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 - 12213 makes this type of information confidential. Accordingly, we will not rule on this information until we have determined the scope of ADA confidentiality. You may withhold the portions of the documents preceding the information created by a physician until we have reached a determination. We will issue a separate ruling on this information at that time. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/LBC/rho

Ref.: ID# 28575

Enclosures: Submitted documents

cc: Ms. Tammy C. Manning
Madeline D. Sitzes & Associates
901 West Alabama at Roseland
Houston, Texas 77006
(w/o enclosures)